

SENATE JUDICIARY

Exhibit No. 4

Date: 2/13/15

Bill No. HB 43

Friday February 13, 2015

Testimony prepared for Senate Judiciary Committee

In support of: HB43 Revise Executive Clemency Laws

Primary Sponsor: Rep Margaret (Margie) MacDonald

Prepared and submitted by Moe Wosepka, a private citizen

A recent decision by the Montana Board of Pardon and Parole (BoPP) has brought to light an area where there is a glaring lack of oversight of Board decisions. The decision was issued by the board in the case of a clemency application for Barry Beach. The application was made for a sentence modification to allow the possibility of parole for Mr. Beach who has served over 30 years in the Montana prison system.

This statement that I am making today and suggestion for a modification of the clemency statute is not in any way meant to debate the Beach ruling. The purpose of the proposed modification is to address a section of code that grants authority to a volunteer board that goes far beyond what should be considered good government. No agency or volunteer board should be given authority to make decisions for which there is no oversight. In fact in this case the governor is expressly prevented by law from acting on clemency applications if the BoPP decides that they will not hear the case or if they have a negative recommendation. That is an incredible amount of power to be giving to a volunteer board, and current law allows this board to be as few as two members. These two are not required to have any experience or background in criminal justice, law enforcement, mental health, or any other applicable profession. The Chair can choose one member who supports his or her position and the two of them can make a decision that commits the tax payers of the state to millions of dollars with no oversight from any of the three branches of government. It is not fiscally responsible for the Legislature to allow that to happen.

It would be a far better system to allow the Governor the opportunity to take action on clemency requests even if the BoPP issues a negative recommendation. The Governor may not want to take further action but it is possible that the Governor's office has some information that the BoPP does not have. The Governor's office may even have access to resources than the board does have through department heads and staffers with greater expertise. This is especially germane since some members of the BoPP are not required to have any expertise or experience in criminal justice matters. Their authority comes solely from an appointment by the Governor.

Current law states that executive clemency applications should be made to the BoPP, as it should be. The board should be the screeners, conduct hearings and make recommendations to the Governor. The problem occurs when the board makes a negative recommendation or makes no recommendation at all. If that occurs the governor is prevented by law from taking any further action on the case.

It is illogical that a volunteer board should be allowed to make decisions on clemency applications that prevent any further action by the Executive branch. They are not accountable to the Governor or the Legislature and since they are not elected, they are not accountable to the voters.

The state of Washington provides the BoPP is there to assist the Governor with a clemency decision but the Governor is not prevented by the BoPP from making a decision. In Florida "the Governor, with the approval of at least two members of the Clemency Board, has the unfettered discretion to grant, clemency at any time, for any reason".

This is not new, nor untried. In the case of Montana law, this latest ruling may have surfaced a problem that has been there for years, but we were not aware of the problem because the cases were not as visible as the Beach case. I would suggest that granting this amount of power and lack of oversight to a volunteer board could result in abuse and should not be granted. We can easily make the change, and correct the problem by granting the Executive branch authority to make clemency decisions unfettered by the BoPP.

Thank you for your time and your service. I respectfully ask you to support passage of HB43.

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